

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

BORIS BRYANT, DARREN MAYO,  
EDWARD PIERRE, LAWRENCE GRICE,  
KEVIN MCINTYRE, MAURICE  
GALIMORE, JAMES BROWN, CARLOS  
BEATTY, MARCUS PAREJO, LAMAR  
NEWTON, JOHN LUCAS, CARLTON  
SYKES,

Plaintiffs,

v.

FMC TECHNOLOGIES, INC., Pro Staff  
PERSONNEL ACQUISITION CORP.,

Defendants.

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Case No. 04:08-CV-03744

JOINT PRE TRIAL STATEMENT

1. APPEARANCE OF COUNSEL

A. Plaintiffs

Boris Bryant, Darren Mayo, Edward Pierre, Lawrence Grice, Kevin McIntyre, Maurice Galimore, James Brown, Carlos Beatty, Marcus Parejo, Lamar Newton, John Lucas, and Carlton Sykes

Counsel

Angela Alioto (Attorney in Charge), Joseph Alioto Veronese, Steven L. Robinson and Joshua D. Boxer , The Law Offices of Joseph L. Alioto & Angela Alioto, 700 Montgomery Street, San Francisco, Ca 94111, Telephone No: 415-434-8700, and Facsimile No: (415) 438-4638.

B. Defendant FMC Technologies, Inc, ("FMC").

Kerry E. Notestine (Attorney in Charge), Kelley Edwards and Sarah Stoffregen, Littler Mendelson, 1301 McKinney Street, Suite 1900, Houston, Tx . 77010, Telephone No: 713-951-9400 and Facsimile No: 713-951-9212.

Lynn A. Kappelman, Seyfarth Shaw LLP, World Trade Center East, Two Seaport Lane, Suite 300?Boston, MA 02210, Telephone No: 617-946-4888 and Facsimile No: 617-699-3490.

C. Defendant Dobbs Temporary Services, Inc. dba Pro Staff Personnel Services ("Pro Staff").

W. Jackson Wisdom (Attorney in Charge) and James M. Cleary Martin, Disiere, Jefferson & Wisdom, LLP, 808 Travis Street, Suite 1800, Houston, Tx, 77002, Telephone No: (713) 632-1700, and Facsimile No: (713) 222-0101.

2. STATEMENT OF THE CASE

The Plaintiffs in this case are Boris Bryant, Darren Mayo, Edward Pierre, Lawrence Grice, Kevin McIntyre, Maurice Galimore, James Brown, Carlos Beatty, Marcus Parejo, Lamar Newton, John Lucas and Carlton Sykes

The Defendants in this case are FMC and Pro Staff.

Eleven African American and one West Indian plaintiffs sue their present or former employer, FMC for maintaining a racially hostile work environment. Nine of the Plaintiffs sue FMC for discrimination in violation of Title VII and all of the Plaintiffs sue that Defendant for discrimination in violation of 42 U.S.C. § 1981.<sup>1</sup> The Plaintiffs base their claims on denial of promotions, delayed hiring,<sup>2</sup> failure to train, wrongful discipline,<sup>3</sup> unjust dismissal,<sup>4</sup> exposure to hangman's nooses, racial slurs and harassment based upon race or national origin. FMC denies the plaintiffs' allegations. Specifically, FMC denies that a racially hostile work environment existed in the Assembly Department at FMC's facility, denies that it unlawfully discriminated against the plaintiffs based on race or national origin, in any way and maintains that it made all employment decisions regarding the plaintiffs based on lawful criteria. FMC further contends that to the extent it learned of any racially hostile incidents at its facility, FMC took immediate action to investigate the complaint in order to find the person responsible. Where the company confirmed complaints of inappropriate conduct based on race or national origin, the company took appropriate corrective action, including disciplining, and in some cases, terminating the offending parties.

All of the Plaintiffs work or worked for Defendant FMC at its Gears Road Facility.

Pro Staff is a temporary services agency which employs temporary workers at various client facilities, including FMC's Gears Road facility under contract with FMC.

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<sup>1</sup>The defendants take the position that Plaintiffs Beatty, Brown, and McIntyre's race discrimination claims under § 1981 were dismissed on summary judgment.

<sup>2</sup> The defendants contend that this element of the plaintiffs' race discrimination claims was dismissed on summary judgment.

<sup>3</sup>The defendants contend that this element of the plaintiffs' race discrimination claims were dismissed on summary judgment.

<sup>4</sup>The defendants contend that this element of the plaintiffs' race discrimination claims were dismissed on summary judgment

Individuals who seek to work for FMC at the Gears Road facility for positions of the type held by Plaintiffs must first be hired by Pro Staff or a similar temporary services agency as temporary workers. FMC hires individuals in these positions directly only after they have worked as temporary workers for Pro Staff or some other company.

Plaintiffs contend that FMC and Pro Staff are joint employers. FMC and Pro Staff contend that they are separate companies and do not make up a single, integrated enterprise.

Eight of the plaintiffs also sue Defendant Pro Staff for race discrimination, three plaintiffs have also sued Pro Staff for maintaining a racially hostile work environment. They base their claims on denial of promotions, delayed hiring, failure to train, wrongful discipline, exposure to hangman's nooses, racial slurs and harassment based upon race or national origin. Pro Staff denies that they discriminated against any Plaintiff based on race or national origin or maintained a racially hostile work environment. Pro Staff further contends that Plaintiffs did not suffer any adverse employment actions while employed by Pro Staff. Pro Staff further contends that no Plaintiff complained to it about unlawful discrimination or harassment.

3. JURISDICTION

Jurisdiction is based upon substantial Federal questions. 42 U.S.C. § 2000e-2(a)(1) and 42 U.S.C. § 1981

4. PENDING MOTIONS

An unopposed motion by Defendant FMC to extend page limits of memoranda of law is pending.

The parties anticipate filing motions in limine.

5. EXHIBITS

See Attachments.

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6. WITNESSES

A PLAINTIFFS FACT WITNESSES

Boris Bryant

Darren Mayo

Edward Pierre

Lawrence Grice

Kevin McIntyre

Maurice Galimore

James Brown

Carlos Beatty

Marcus Parejo

Lamar Newton

John Lucas

Carlton Sykes

Abel Adame

James Faucett

Willie Howard

Susan Webb

Vicky Vargas

Michelle Risinger

Quincy Turner

Jon Troxell

Eric Smith

Jimmy Schiwart

Brian Sangster

Brandon Reed

Freedom Nokomo

Richard Meier  
Brett Mohn  
Stephen Matula  
Heath Herren  
J.D. Lockhart  
Patsy Livingston  
Brian Januk  
Eric Heuring  
Brad Hooker  
Steven Henderson  
Robert Graves  
Wendell Deborski  
Tellis Cannon  
Will Cartha  
Ira Conley  
Louis Brown  
Paige Fuller  
Justin Barr  
Roy Bolton  
Stephen Barrett  
Gina Smoot  
Ima Andiohko.  
Elisabeth Caciola  
Elaine Jackson  
Michael Turner  
Mark McDonald  
Garry Steger

Al Tribble

Patricia Pope

Audrey D. Hines

B. EXPERTS

Dr. Kenneth Lehrer is a consulting forensic economist. He will be providing testimony as to the economic losses of the Plaintiffs who have suffered adverse employment actions. He holds four (4) degrees from New York University: Bachelor of Science (Finance), Master of Business Administration (Banking), Master of Arts (Economics) and a Doctor in Urban Economics. He was an adjunct Professor of Finance at the University of Houston, Graduate School of Business Administration from 1984-2002. With his firm, he is a member of the National Association of Business Economists, the American Academy of Economic and Financial Experts, American Law and Economics Association, Houston Business Economists, National Forensic Center, National Association of Forensic Economists and other organizations.

Craig Pratt is a human resources consultant who will be providing testimony as to: The responses by FMC to the discovery of a hangman's noose in the workplace in September 2007; as to FMC's responses to allegations of discrimination or harassment uncovered in two Human Resources investigations in the Spring of 2008; FMC's engagement with third party contractors in EEO Compliance; and The failure of FMC to address persistent work place issues. Pratt is the principal of Craig Pratt & Associates (from 1986 to the present), a management consulting firm. Pratt has provided trial qualified expert testimony (65 trial appearances 1990-2009).. He has Senior Professional Human Resources Certification awarded by the Human Resources Certification Institute.

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C. FMC'S FACT WITNESSES

Edward Pierre

Kevin McIntyre

Carlton Sykes

Maurice Galimore

James Brown

Carlos Beatty

Marcus Parejo

John Lucas

Boris Bryant

Lawrence Grice

Lamar Newton

Darren Mayo

Steve Barrett

Susan Webb

Mark McDonald

James Faucett

Jon Troxell

Eric Trammel

Patsy Livingston

Michelle Risinger

Vicki Vargas

Chris Roggeman

LaWanda Ware

Wendell Deboskie

Mike Turner

Peter Kinnear

John Grempe



Maryann Seaman

Brian Janak

Bryan Sangster

Eric Heuring

Roy Bolton

Landon Heath Herren

Bret Mohn

Steven Matula

Joe McHenry

Jerry Higginbotham

Robert Clauson

Gerald Peavy

Stuart Stout

Jason Phillips

Darren Morrison

Domingo Velarde

Cynthia Polnick

Dean Winkler

Paige Fuller

Elizabeth Cashiola

Gina Smoot

Alfred Tribble

Gary Steger

Don Carter

Custodian of records for Kelsey-Sebold Clinic, 1960 Family Practice, Jesus Mayor, Jr., M.D., and SkillMaster, Inc. (now Advantage Staffing).

Any witness called by Pro Staff or plaintiffs

D. **FMC'S EXPERT WITNESSES**

Dan Cliffe is a certified public accountant and business consultant who will testify regarding the plaintiffs' alleged economic damages. Mr. Cliffe has a Bachelors degree and MBA from Loyola University. He is a former Assistant Dean at Tulane University and has taught management and finance courses at both Loyola and Tulane. He is a member of the Louisiana Society of Certified Public Accountants and has held various positions in financial planning and analysis, financial management, business planning, and banking with Fortune 500 companies and regional banks.

Dr. Kenneth Boudreaux is a consulting economist who will testify regarding the plaintiffs' alleged economic damages. Dr. Boudreaux has his Bachelors degree from Princeton University, a MBA from Tulane University, and his PhD from the University of Washington. Dr. Boudreaux is currently an Emeritus Professor of Economics and Finance at Tulane University where he has taught economics and finance courses since 1970. Dr. Boudreaux has written two books and numerous articles on topics related to finance.

Dr. P. Richard Jeanneret is an organizational psychologist who will testify about the statistical analysis he conducted into FMC's hiring data in order to determine the following: (1) whether an adverse impact was present for any minority ethnic group relative to the majority ethnic group; (2) whether a significant difference existed in the time it took minority ethnic groups to apply for permanent employment relative to the majority ethnic group; (3) after applying for permanent employment, whether a significant difference existed in the time it took minority ethnic groups to be hired into permanent employment relative to the majority ethnic group; and (4) overall, whether a significant difference existed in the time it took minority ethnic groups to proceed from temporary status to permanent FMC employment status relative to the majority ethnic group. Dr. Jeanneret is the president of Valtera Corporation, a global human resources consulting firm. He holds a PhD in Industrial and Organizational Psychology from

Purdue University and is a licensed psychologist in the State of Texas.

DeDe Church is a workplace investigator and human resources consultant who will testify regarding FMC's efforts to prevent and correct harassment in the workplace, including the company's response to the discovery of nooses and other offensive symbols in its facility. Ms. Church is the President and founder of DeDe Church and Associates, LLC, a human resources consulting firm. Ms. Church is a licensed attorney and a former Senior Assistant Attorney General for the State of Texas in the Civil Rights/General Litigation Division. During her seven years with the Attorney General's Office, she advised dozens of state agencies on the proper response to employee complaints, represented the State in approximately 30 trials involving workplace discrimination, and for the past eleven years has worked as a consultant advising employers on best practices in human resource matters. As a private consultant, she has investigated over 100 complex employee complaints and regularly provides anti-discrimination and harassment and investigations training.

E. **PRO STAFF'S FACT WITNESSES**

Edward Pierre

Kevin McIntyre

Carlton Sykes

Maurice Galimore

James Brown

Carlos Beatty

Marcus Parejo

John Lucas

Boris Bryant

Lawrence Grice

Elizabeth Cashiola

Gina Smoot

Susan Webb

James Faucett  
Steve Barrett  
Jon Troxell  
Vicki Vargas  
Joe McHenry  
Mike Turner  
Mark McDonald  
Michele Risinger  
Patsy Livingston  
Chris Roggeman  
Debra Gray  
Cori Phillips  
Eric Heuring  
Brian Janak  
Eric Trammel  
Bryan Sangster  
Howard Bicow  
Stewart Stout  
Louis Brown  
Jason Phillips  
Steven Matula  
Robert Clauson  
Jerry Higginbotham  
Gerald Peavy  
LaWanda Ware  
Sarah Eagar  
Peter Kinnear  
Maryann Seaman

John Grempe

David Borth

Cynthia Polnick

Darren Morrison

Paige Fuller

Dean Winkler

Domingo Velarde

Bret Mohn

Wendell Deboskie

Ima Ndiokho

Roy Bolton

Landon Heath Herren

Any witness called by Plaintiff or FMC

7. **TRIAL**

Plaintiffs counsel estimates trial will last approximately six (weeks. This estimate is based upon her experience in other multiple plaintiff cases of similar size.

Counsel for the respective defendants contend that this Court's Order on the defendants' motions for summary judgment dismissed all of the plaintiffs' retaliation claims, all of plaintiffs McIntyre, Beatty, and Brown's discrimination claims, and other claims of discrimination other than those relating to training or promotion decisions, including the plaintiffs' discrimination claims pled under 42 U.S.C. § 1981. In particular, the defendants contend that all claims relating to plaintiffs Lucas and Mayo's terminations have been dismissed, as they were characterized in the summary judgment briefing only as retaliation claims. If all evidence relating to these claims is excluded from trial, counsel for the respective defendants estimate trial will last approximately three to four weeks. If some of these claims remain, however, and evidence regarding the plaintiffs' terminations and other allegations is admitted, counsel for the respective

defendants believe the trial could last between five and six weeks.

Counsel for the Plaintiffs disagree with the Defendants' contention that this court's ruling on summary judgment disposes of the entirety of the discrimination claims of Plaintiffs McIntyre, Beatty and Brown and as those Plaintiffs also pleaded claims for race discrimination in violation of 42 U.S.C. § 1981.

Counsel for the Plaintiffs disagree with the Defendants' contention that the summary judgment order dismissed all of the Plaintiffs' discrimination claims other than those relating to training or promotion decisions.

Counsel for Plaintiffs also disagree with the Defendants' contention that the wrongful discharges of Plaintiff Lucas and Mayo are no longer at issue. Plaintiffs' counsel contend that those adverse actions were alleged as part of their the claims for race discrimination.

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United States District Judge

APPROVED:

/S/

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Angela Alioto  
Attorney in Charge for Plaintiffs

Date: September 27, 2010

/S/

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Kerry E. Notestine  
Attorney in Charge for Defendant  
FMC

Date: September 27, 2010

/S/

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W. Jackson Wisdom  
Attorney in Charge for Defendant  
Pro Staff

Date: September 27, 2010